* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No.1026/2017**

Reserved on: 6th December, 2017

% **Pronounced on: 13th December, 2017**

MANJU DEVI ..... Appellant

Through: Mr. Shiv Kumar Kohli, Advocate with Mr. Praveen Gupta, Advocate.

versus

PREMJIT KAUR ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. No. 44438/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 44435/2017 and 44437/2017 (for delays)

These are applications seeking condonation of delay of 781 days in filing the appeal and 28 days in filing the appeal.

Though there is no reason to condone the huge delay because the only ground for seeking condonation that the counsel did not file the appeal is not believable, yet, since the appellant has been heard on merits of the appeal, hence only delay is condoned.

C.Ms. stand disposed of.

RFA No.1026/2017 and C.M. Appl. No. 44436/2017 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment and decree of the trial court dated 7.7.2015 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.6,00,000/- along with interest at 9% per annum.

2. The facts of the case pleaded by the respondent/plaintiff were that the appellant/defendant approached the respondent/plaintiff that the owner of a property bearing no. C-7/492 admeasuring 25 sq. yards, J.J. Colony, Sultanpuri, Delhi was in urgent need of the money and hence wanted to sell this property. Respondent/plaintiff was having good relation with the appellant/defendant and therefore respondent/plaintiff paid a sum of Rs.6,00,000/- to the appellant/defendant as a loan towards an investment for purchase of the property for a total price of Rs.7,40,000/-. The balance amount of

Rs.1,40,000/- for purchase of the property was to be contributed by the appellant/defendant. It was agreed between the parties that when this property will be sold the profits thereof will be shared with $2/3^{rd}$ share of the profits going to the respondent/plaintiff and $1/3^{rd}$ share of the profits going to appellant/defendant. Appellant/defendant is also said to have executed a receipt dated 28.1.2008 Ex.PW1/1 in this regard. As the appellant/defendant sold the property but did not return the loan amount to the respondent/plaintiff nor paid the respondent/plaintiff the share of profits, therefore, the subject suit came to be filed for recovery of Rs.6,00,000/- paid by the respondent/plaintiff to the appellant/defendant.

3. Appellant/defendant contested the suit and pleaded that no moneys were contributed by the respondent/plaintiff towards purchase of the subject property. Appellant/defendant claimed to have purchased the property by getting financial help from her family members. It was further pleaded by the appellant/defendant that the respondent/plaintiff had taken signatures of the appellant/defendant on blank papers for police verification as a tenant and therefore the receipt dated 28.1.2008 was pleaded to be forged and fabricated.

Appellant/defendant pleads to have signed PW1/1 *bonafidely* and also put her thumb impression because it is pleaded that appellant/defendant had faith in the respondent/plaintiff who was her landlady. Appellant/defendant pleaded that she was a tenant of the respondent/plaintiff and since the appellant/defendant purchased the subject property the respondent/plaintiff seemed to have developed some grudge. The suit was hence prayed to be dismissed.

4. After pleadings were complete the trial court framed issues and parties led evidence. These aspects are noted in paras 5 to 7 of the impugned judgment and these paras read as under:-

> "5. On 11.09.2009, the following issues were framed by the Ld. Predecessor:-
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> 1. Whether the suit is without any cause of action? OPD
> 2. Whether the suit is barred by provisions of Specific Relief Act? OPD
> 3. Whether the plaintiff is entitled to a decree for recovery of Rs. 6 lacs? OPP
> 4. Whether the plaintiff is entitled to any interest on the suit amount, if so, at what rate and for what period? OPP
> 5. Whether the plaintiff is entitled to decree of permanent injunction in respect of the suit property? OPP
> 6. Relief.
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> 6. Ms. Premjeet Kaur was examined herself as PW-1 and tendered his evidence as Ex PW1/1 and relied upon document Agreement dated 28.01.2008 as Ex PW1/1 and possession slip bearing no. 7692 dated 30.10.1976 as Ex PW1/2.
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> 7. Ms Manju Devi was examined herself as DW-1 and tendered his evidence as EX. DW1/1."

5. Trial court has held the relevant issue nos. 3 and 4 in favour of the respondent/plaintiff and against the appellant/defendant holding that the defence of the agreement Ex.PW1/1 dated 28.1.2008 signed by the appellant/defendant in blank cannot be believed. Trial court notes that it is not disputed that the document Ex.PW1/1 admittedly bears the signatures of the appellant/defendant as also has thumb impression. Thumb impression has been fixed across the revenue stamp and which would not be if the thumb impression was allegedly for police verification as no revenue stamp is required in such application for police verification. Trial court has also rightly observed that there is no complaint made by the appellant/defendant that the respondent/plaintiff had taken the signatures of the appellant/defendant on blank papers. Trial court has also held that the appellant/defendant standing in the witness box and making a self-serving averment of having received the amount of Rs.6 lacs from her mother and brother could not be believed because no evidence has been led as to how the amount of Rs.7,60,000/- is borrowed for purchasing the property and especially when the brother of the appellant/defendant is working in Ganga Ram Hospital only at a salary

of Rs.3000/- per month. Trial court has also rightly held that the respondent/plaintiff need not prove her capacity once the document Ex.PW1/1 is found to have been signed by the appellant/defendant and this document also contains the thumb impression of the appellant/defendant. The relevant observations of the trial court are made in paras 9 to 12 of the impugned judgment and these paras read as under:-

> "9. Onus of proving of this issue is on the plaintiff. Plaintiff appeared as PW1 and re-iterated the averments made in the plaint and inter-alia testified that the plaintiff at the request of defendant no. 1 had paid an amount of Rs.6 lacs for purchasing the suit property for an amount of Rs.7,40,000/- and the remaining consideration amount of Rs.1,40,000/- was paid by the defendant. The defendant has undertaken to return the said amount in the shape of 2/3 shares of the suit property and remaining 1/3 was to be taken by the defendant. In cross examination, he denied the suggestion that she obtained the signatures of the defendant on plain paper on the pretext that police verification of defendant is to be tendered. The original documents of the suit property in the name of defendant no. 1 were handed over to her, but her previous counsel has misplaced the same.
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> 10. The rebut the case of the plaintiff. The defendant appeared as DW1 and reiterated the facts as detailed in the WS and, inter-alia, testified that plaintiff has got forged Ex. PW1/1 as the defendant has signed the blank papers at the instance of the plaintiff for her police verification as she was tenant under the land lordship of the plaintiff. The suit property was purchased by her from her own funds after borrowing from her mother and brother for whose residence she purchased the suit property.
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> 11. It is the contention of Ld. counsel for the defendant that plaintiff had no capacity to pay the amount of Rs.6 lacs at the time of execution of Ex.PW1/1. Therefore, suit of the plaintiff deserves to be dismissed. Ld. counsel for the plaintiff has contended that the capacity of the plaintiff is proved on record as the plaintiff has borrowed the amount of Rs. 2 lacs from the mother-in-law of her daughter namely Devender Kaur and 1 lac from Chinda, son of her maternal uncle and 1 lac she arranged by mortgaging her other house. Therefore, the plaintiff has proved her capacity to pay the amount at the time of execution of Ex.PW1/1.

12. It may be noted that the defendant has raised a defence that plaintiff has taken her signatures on blank papers for filing her tenant verification report before the police as the defendant was a tenant under the plaintiff at once upon a time, but this defence appears to be sham as the agreement/Ex.PW1/1 not only bears the signatures of the defendant, but also her thumb impression on the revenue stamp are affixed on Ex. PW1/1. The defendant has put thumb impression on the revenue stamp and by any stretch of imagination, it cannot by presumed that defendant was asked to put her thumb impression on the revenue stamp for police verification. Otherwise also, the defendant has not made a complaint against the plaintiff before any competent authority that while getting her signatures on a police verification report, the plaintiff has forged and fabricated this agreement Ex.PW1/1. It is the settled law that if a person admits his/her signatures on a document, then the contents of the said documents are presumed to be in the knowledge of the said person. Therefore, plaintiff has proved that the defendant has executed her signatures on Ex.PW1/1. The defendant has submitted that she had purchased the suit property by arranging the funds from her mother and brother, but no evidence has been led in this regard as to how this amount was borrowed by her mother and brother as the defendant is working in Ganga Ram Hospital and is getting a salary of Rs.3000/- per month. Therefore, the capacity of the defendant of arranging the said amount for purchasing the said property is doubtful. Although plaintiff has not examined any witness to prove her capacity to advance loan to the defendant otherwise she had deposed that she has borrowed some amount from relatives. In view of the fact that written document has been executed by defendant in her favour, which has been proved on record. It can be presumed that she has capacity to pay amount of Rs.6 lacs to the defendant. In addition to it, it may be observed that when written document is available, no oral evidence can be allowed in this regard except by way of proviso appended to Section 92 of the Evidence Act. From the above discussion, the plaintiff is successful in proving that she had advanced the amount of Rs.6 lacs as loan. Therefore, issue no. 3 and 4 are decided in favour of the plaintiff and against the defendant." (underlining added)

6. In my opinion, the judgment of the trial court is also to be sustained on the ground that the original title document of the property in the present case is a possession slip which is issued by Delhi Development Authority bearing no. 7692 dated 30.10.1976 and

original of this document was filed and proved by the respondent/plaintiff as Ex.PW1/2. This original document, essentially a document of title, could not have been in possession of the respondent/plaintiff in case this document was not handed over by the appellant/defendant to the respondent/plaintiff and which document would have been handed over when the appellant/defendant received a sum of Rs.6 lacs from the respondent/plaintiff for purchasing the subject property. For this additional reason also the impugned judgment has to be sustained by holding that the agreement Ex.PW1/1 was genuine and this fact was not a document which was forged and fabricated allegedly because signatures and thumb impression and the appellant/defendant were taken in blank by the respondent/plaintiff.

7. There is no merit in the appeal and the same is hereby dismissed.

DECEMBER 13, 2017 **VALMIKI J. MEHTA, J**

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